

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Charles W. Pollock, Jr.,

Case No. 20-cv-643 (NEB/TNL)

Petitioner,

v.

REPORT & RECOMMENDATION

Warden S. Kallis,
FMC Rochester,

Respondent.

I. INTRODUCTION

This matter is before the Court on pro se Petitioner Charles W. Pollock, Jr.'s Motion for Judgment by Default, ECF No. 19. This motion has been referred to the undersigned for a report and recommendation to the district court, the Honorable Nancy E. Brasel, District Judge for the United States District Court for the District of Minnesota, under 28 U.S.C. § 636 and D. Minn. LR 72.1. For the reasons stated below, it is recommended that Petitioner's motion be denied.

II. BACKGROUND

Petitioner is currently in custody at the Federal Medical Center located in Rochester, Minnesota, and seeking a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. *See generally* ECF No. 1. On July 10, 2020, Respondent Warden S. Kallis filed a Response to the Petition. *See generally* ECF Nos. 13, 14. As stated in an Order issued today, the Court considers the Response to be timely filed. ECF No. 27 at 3.

As also stated in today's Order, the Court understands that Petitioner experienced difficulties receiving a copy of the Response. ECF No. 27 at 4; *see, e.g.*, ECF Nos. 16, 22, 25, 26. When Petitioner had not received the Response as of July 21, he proceeded to file the instant motion, asserting that "Respondent failed to answer, or otherwise respond to" the Petition. ECF No. 19 at 1. The Court appreciates that, due to the difficulties Petitioner experienced, it may well have appeared to him that Respondent had not responded to the Petition when in fact the Response had been filed.

But, even if the Response had not been filed, Petitioner would still not be entitled to default judgment. A habeas petitioner is not "entitled to default judgment simply because the government did not file an opposition to his habeas petition." *Quinones-Torres v. United States*, 240 F. App'x 876, 878 (1st Cir. 2007) (per curiam) (citing *Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir. 1990)); *see, e.g.*, *Garcia v. United States*, Civil Action No. 19-181 (MAS), 2019 WL 5788087, at *1 (D. N.J. Nov. 6, 2019); *Bradford v. Hobbs*, No. 5:12-CV-00077 JMM-JTK, 2012 WL 2087384, at *2 (E.D. Ark. May 23, 2012), *adopting report and recommendation*, 2012 WL 2087379 (E.D. Ark. June 8, 2012). Nor has Petitioner identified any authority permitting the relief he seeks.

[Continued on next page.]

III. RECOMMENDATION

Therefore, **IT IS HEREBY RECOMMENDED** that Petitioner's Motion for Judgment by Default, ECF No. 19, be **DENIED**.

Dated: August 7, 2020

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

Pollock v. Kallis
Case No. 20-cv-643 (NEB/TNL)

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).